

CUONG MACH BINH TIEU

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDANT

FILED

JAN 29 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASE NO:3:11-CR-00097-CRB

(***PETITIONERS RESPONSE TO THE GOVERNMENTS OPPOSITION TO
PETITIONERS FED.R.CRIM.P RULE 36 MOTION***)

The governments arguemant that petitioners petition is second or successive is without merit and is irrelevant to petitioners claim.

Secondly the governments opposition motion actually favors correction under rule 36 for the government is contendin that petitioners indictment is for ephedrine, methamphetamine and cocain but based on the PSI petitioner was found/sentenced for MDMA see arguemant below.

The government argues that count 3 is for conspiracy to possess with intent to distribute methamphetamine but if you look at paragraph 80 of the PSI petitioner was sentenced for possess with intent to distribute and distribution of MDMA 21 u.s.c 841(a) (1) racketeering act 3.

The government stance for count 4 is possession with intent to disribute methamphetamine but paragraph 87 of PSI is: extortionate extension of credit (5,000 loan on November 14,2009) racketeering act 4.

The governments stance for count 5 is:conspiracy to possess and distribuute ephedrine but paragraph 94 is:conspiracy to possess with intent to distribute and distribution of MDMA,21 u.s.c 846,841(a) (1).rackeetering act

5.

The government stance for counts 6 is possession and distribution of ephedrine but paragraph 101 is for extortion extension of credit (10,000 loan on October 29,2009).racketeering act 6.

The government stance for count 8 is:manufacture of methamphetamine but paragraph 115 is: conspiracy to possess with intent to distribute and distribution of MDMA,21 u.s.c 846,841(a)(1)racketeering act 8

Based upon the Bureau of prisons sentence monitoring computation data as of 1-23-2018 petitioner was sentenced under (MDMA) not ephedrine not methamphetamine not cocaine clearly there is some serious discrepancies in what the government is arguing what petitioner is sentenced for namely methamphetamine, cocaine, and ephedrine in its opposition motion and what petitioner is sentenced under for (MDMA) based upon the bureau of prisons what's in petitioner's inmate central file.

Therefore rule 36 is the proper vehicle to correct a clerical error based upon a clerical mistake in what the government is arguing and what is on file for the (BOP).

Based on the bureau of prisons on what they have on file in his inmate central file petitioner is in prison for MDMA but will not provide a copy to petitioner for inmates are not allowed copies of the criminal judgment order or statement of reasons in their possession for security reasons but clearly petitioner is in custody based upon a whole different category of drugs or statutes in petitioner's case therefore petitioner is not just asking counts 5 and counts 7

be fixed now. petitioner is requesting the his whole case be corrected and have a major overview of his case be conducted somehow petitioner is in custody for a whole different range of conduct of MDMA when he is suppose to be in custody for methamphetamine,ephedrine. and cocain based on the governments argumant clearly somehow the court mixed some other defendants case with petitioners based on the complexities of what the government opened the door to petitioners is requesting immediate counsel be appointed in this case to remedy this major error in sentencing and judgment order and whats on file for the bureau of prisons in petitioners inmate central file and PSI therefore petitioner request that this court grant petitioners rule 36 motion based upon differan referances by the government contending petitioner is in custody for methamphetamine ephedrine and cocain ,the bureau of prisons and what petitioner has in his PSI is for MDMA.

Therefore the judge does got jurisdiction to correct the criminal judgement order and PSI for the typograph is referancing different drugs and statutes see exhibits attached of what petitioners can provide for this court lastly the government stated they filed there opposition December 26,2017 but mailed a copy to petitioner almost a month later see postmark date and the fact that petitioner did not receive a copy untill janaury 22,2018 clearly there is serious prejudice by the government in this case therefore this court should rule in favor of petitioner and based largely on the discripancies and deliberate fail to give petitioner notice of there allegedl filed petition December

26,2018 thanyou...

***certificate of service and signature under a penalty
of perjury***

PETITIONER CERTIFIES THAT THE FOREGOING IS TRUE AND
ACCURATE UNDER A PENALTY OF PURJURY AND THAT PETITIONER
SERVED A COPY OF THIS MOTION TO THE COURT AND REPONDANT

ON _____

SINATURE _____

SENTENCE MONITORING
COMPUTATION DATA
AS OF 01-23-2018

* 01-23-2018
* 10:26:55

REGNO...: 91019-111 NAME: TIEU, CUONG MACH

FBI NO.....: 503336JA2
ARS1.....: HER/A-DES
UNIT.....: TAHOE
DETAINERS.....: YES

DATE OF BIRTH: 12-31-1969 AGE: 48

QUARTERS.....: T04-202L
NOTIFICATIONS: NO

HOME DETENTION ELIGIBILITY DATE: 09-08-2026

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 03-08-2027 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010-----

COURT OF JURISDICTION.....: CALIFORNIA, NORTHERN DISTRICT
DOCKET NUMBER.....: CR-11-00097-001 CRB
JUDGE.....: BREYER
DATE SENTENCED/PROBATION IMPOSED: 12-05-2012
DATE COMMITTED.....: 01-23-2013
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$1,000.00	\$00.00	\$00.00	\$00.00

RESTITUTION....: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010-----

OFFENSE CODE.....: 545
OFF/CHG: 18:1962(D) CONSP TO CONDUCT THE AFFAIRS OF A RACKETEER-INFL'D
CORRUPT ORGANIZATION;18:1962(C) CONDUCTING THE AFFAIRS OF A
RACKETEER-INFLUENCED CORRUPT ORGANIZAT;21:841(A) (1) PWITD,DISTR
& MANUF OF A CTRL SUBST X 3;21:841(C) (2) POSS/DISTRI LIST
↑ CHEMICAL;21:841 CONSP TO VIOLATE CTRL SUBST ACT X 2

Alt Under MDMA

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE..: 220 MONTHS
TERM OF SUPERVISION.....: 5 YEARS
DATE OF OFFENSE.....: 03-02-2011

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Venue**

UNITED STATES OF AMERICA)
)
 vs.) **SENTENCE REDUCTION INVESTIGATION**
) **REPORT**
)
 Cuong Mach Binh Tieu) **Docket No.: 0971 3:11CR00097-001- CRB**
)
)

Prepared for: The Honorable Charles R. Breyer
Senior United States District Judge

Prepared by: Catheryn Grier
Supervisory U.S. Probation Officer
San Francisco, CA
Work: (415) 436-7436
catheryn_grier@canp.uscourts.gov

Assistant U.S. Attorney
Doug Wilson
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
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Doug.Wilson@usdoj.gov

Defense Counsel
Cuong Mach Binh Tieu (pro se)
Reg. No. 91019-111
P.O. Box 800
Herlong, CA 96113

Sentencing Date: December 6, 2012

Offense: **Count 1:** Conspiracy to Conduct the Affairs of a Racketeer-Influenced Corrupt Organization
18 U.S.C. § 1962(d), a Class C felony,
20 years imprisonment/\$250,000.00 fine
Count 2: Conducting the Affairs of a Racketeer-Influenced Corrupt Organization
18 U.S.C. § 1962(c), a Class C felony,
20 years imprisonment/\$250,000.00 fine
Counts 3, 7 and 21: Conspiracy to Violate Controlled Substance Act
21 U.S.C. §§ 846, 841(b)(1)(A)(ii) and (vii); a Class A felony,
10 years to life imprisonment/\$10,000,000.00 fine
Count 4: Possession with Intent to Distribute, Distribution, and Manufacture of a Controlled Substance
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(ii) and (vii), a Class A felony,
10 years to life imprisonment/\$10,000,000.00 fine

Re: Tieu, Steven Binh (33958)

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Count 5: Conspiracy to Violate Controlled Substances Act
 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), a Class C felony,
 20 years imprisonment/\$1,000,000.00 fine

Count 6: Possession and Distribution of Listed Chemical to
 Manufacture a Controlled Substance
 21 U.S.C. §§ 841(c)(2), a Class C felony,
 20 years imprisonment/\$250,000.00 fine

Count 8: Possession with Intent to Distribute, Distribution, and
 Manufacture of a Controlled Substance
 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), a Class C felony,
 20 years imprisonment/\$1,000,000.00 fine

Count 22: Possession with Intent to Distribute and Distribution of a
 Controlled Substance
 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(ii), a (Class B)
 felony,
 5 to 40 years imprisonment/\$5,000,000.00 fine

Date Report Prepared: June 29, 2017

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

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Ephedrine has the equivalency of 250,000 kilograms of marijuana, for a total of 250,400 kilograms. Pursuant to USSG §2D1.1(c)(1), 30,000 kilograms or more of marijuana has a base offense level of 38.

38

<u>Drug Name</u>	<u>Drug Quantity</u>	<u>Marihuana Equivalency</u>
Methamphetamine	200.0 g	400.0 kg
Ephedrine	25.0 kg	250000.0 kg
Total		250400.0 kg

75. Specific Offense Characteristics: None. 0
76. Victim Related Adjustment: 0
77. Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). +4
78. Adjustment for Obstruction of Justice: None. 0
79. Adjusted Offense Level (Subtotal): None. 42
80. Racketeering Act 3: Possess with Intent to Distribute and Distribution of MDMA, 21 U.S.C. § 841(a)(1) 40
81. Base Offense Level: The guideline for a violation of 21 U.S.C. § 841(a)(1) is found at the Drug Quantity Tables found at USSG §2D1.1(c). There is no listed quantity for the MDMA. According to USSG §2D1.1, comment (n.10(D)), the minimum offense level is 12. 12
82. Specific Offense Characteristics: None. 0
83. Victim Related Adjustment: None. 0
84. Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). +4
85. Adjustment for Obstruction of Justice: None. 0
86. Adjusted Offense Level (Subtotal): 16
87. Racketeering Act 4: Extortionate Extension of Credit (\$5,000 loan on November 14, 2009)
88. Base Offense Level: The guideline for 18 U.S.C. § 892(a) offenses is found in USSG §2E2.1(a) of the guidelines, and provides for a base offense level 20. 20

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- | | | |
|--------|---|----|
| 89. | Specific Offense Characteristics: None. | 0 |
| 90. | Victim Related Adjustment: None. | 0 |
| 91. | Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). | +4 |
| 92. | Adjustment for Obstruction of Justice: None. | 0 |
| 93. | Adjusted Offense Level (Subtotal): | 24 |
| ✓ 94. | <u>Racketeering Act 5</u> : Conspiracy to Possess with Intent to Distribute and Distribution of MDMA, 21 U.S.C. §§ 846, 841(a)(1) | |
| 95. | Base Offense Level: The guideline for a violation of 21 U.S.C. § 846 is found at the Drug Quantity Tables found at USSG §2D1.1(c). There is no listed quantity for the MDMA. According to USSG §2D1.1, comment. (n.10(D)), the minimum offense level is 12. | 12 |
| 96. | Specific Offense Characteristics: None. | 0 |
| 97. | Victim Related Adjustment: None. | 0 |
| 98. | Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). | +4 |
| 99. | Adjustment for Obstruction of Justice: None. | 0 |
| 100. | Adjusted Offense Level (Subtotal): | 16 |
| 101. | <u>Racketeering Act 6</u> : Extortionate Extension of Credit (\$10,000 loan on October 20, 2009) | |
| 102. | Base Offense Level: The guideline for 18 U.S.C. § 892(a) offenses is found in USSG §2E2.1(a) of the guidelines, and provides for a base offense level 20. | 20 |
| 103. | Specific Offense Characteristics: None. | 0 |
| 104. | Victim Related Adjustment: None. | 0 |
| 105. | Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). | +4 |
| 106. | Adjustment for Obstruction of Justice: None. | 0 |
| 107. | Adjusted Offense Level (Subtotal): | 24 |
| ✓ 108. | <u>Racketeering Act 7</u> : Conspiracy to Possess with Intent to Distribute and Distribution of MDMA, 21 U.S.C. §§ 846, 841(a)(1) | |

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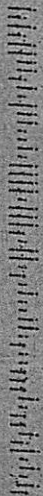
109. Base Offense Level: The guideline for a violation of 21 U.S.C. § 846 is found at the Drug Quantity Tables found at USSG §2D1.1(c). There is no listed quantity for the MDMA. According to USSG §2D1.1, comment. (n.10(D)), the minimum offense level is 12. 12
110. Specific Offense Characteristics: None. 0
111. Victim Related Adjustment: None. 0
112. Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). +4
113. Adjustment for Obstruction of Justice: None. 0
114. Adjusted Offense Level (Subtotal): 16
115. Racketeering Act 8: Conspiracy to Possess with Intent to Distribute and Distribution of MDMA, 21 U.S.C. §§ 846, 841(a)(1)
116. Base Offense Level: The guideline for a violation of 21 U.S.C. § 846 is found at the Drug Quantity Tables found at USSG §2D1.1(c). There is no listed quantity for the MDMA. According to USSG §2D1.1, comment. (n.10(D)), the minimum offense level is 12. 12
117. Specific Offense Characteristics: None. 0
118. Victim Related Adjustment: None. 0
119. Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). +4
120. Adjustment for Obstruction of Justice: None. 0
121. Adjusted Offense Level (Subtotal): 16
122. Racketeering Act 9: Extortionate Extension of Credit (\$5,000 loan on January 14, 2010)
123. Base Offense Level: The guideline for 18 U.S.C. § 892(a) offenses is found in USSG §2E2.1(a) of the guidelines, and provides for a base offense-level 20. 20
124. Specific Offense Characteristics: None. 0
125. Victim Related Adjustment: None. 0
126. Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four levels are added. USSG §3B1.1(a). +4
127. Adjustment for Obstruction of Justice: None. 0

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